

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

THE PRIME INSURANCE SYNDICATE, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2:08cv185-WKW
	)	
CLAUDE J. ZITO d/b/a LEVEL ACRES	)	
MOBILE HOME ESTATES, et al,	)	
	)	
Defendants.	)	

**MOTION TO DISMISS**

COME NOW the Defendant, Claude J. Zito d/b/a Level Acres Mobile Home Estates (referred to herein sometimes as “Zito”), and moves this Honorable Court to dismiss Plaintiff’s complaint for declaratory judgment, and as grounds therefore, states as follows:

1. On or about the 10<sup>th</sup> day of July, 2008, Zito was sued in the Circuit Court of Barbour County, Alabama, Eufaula Division in the case styled Bernie Keys, et al. v. Level Acres Mobile Home Estates, Case No. CV-07-49.

2. On the 17<sup>th</sup> day of March, 2008, Plaintiff, The Prime Insurance Syndicate, Inc. (hereinafter “Prime”), filed its complaint for declaratory judgment to determine the rights and obligations of Prime under a policy of insurance it issued to Zito regarding the above said case styled Bernie Keys, et al. v. Level Acres Mobile Home Estates, Case No. CV-07-49.

3. On or about the 26<sup>th</sup> day of March, 2008, Zito was served with Prime’s complaint.

4. Prime’s complaint for declaratory judgment is due to be dismissed. See Ameritas Variable Life Ins. Co. v. Roach, 411 F.3d 1328 (11thCir. 2005).

WHEREFORE, THE PREMISES CONSIDERED, Defendant, Claude J. Zito d/b/a Level Acres Mobile Home Estates, prays this Honorable Court will dismiss Plaintiff's complaint for declaratory judgment.

Respectfully submitted this the 14<sup>th</sup> day of April, 2008.

\_\_\_\_s/ Clint Wilson\_\_\_\_\_  
Clint Wilson (WIL362)  
Attorney for Petitioner  
OF COUNSEL:  
McCOLLUM CRUTCHFIELD & WILSON  
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(334) 821-7799

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document on the parties listed below electronically or by placing a copy of the same in the United States mail, postage prepaid, to their correct address on this the 14<sup>th</sup> day of April, 2008.

\_\_\_\_s/ Clint Wilson\_\_\_\_\_  
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OF COUNSEL:  
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Bernie and Katie Keys

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